

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANNY REAVES,

Defendant.

8:09CR187**ORDER**

Defendant has filed a second notice of appeal from the Court's denial of his Motion for Recusal. [Filing No. 291](#) (motion); [Filing No. 292](#) (order); [Filing No. 293](#) (first notice of appeal); [Filing No. 298](#) (second notice of appeal). It also comes before the Court on the Eighth Circuit Court of Appeals' remand instructing the District Court to consider whether to issue a certificate of appealability. [Filing No. 304](#).

I. IN FORMA PAUPERIS STATUS

Defendant has not paid the appellate filing fee as to either his first or second notice of appeal. The Court denied him leave to proceed on appeal in forma pauperis with respect to his first notice of appeal, subsequently he has filed numerous untimely and frivolous post-conviction motions. For these same reasons, the Court denies Defendant leave to proceed in forma pauperis on appeal as to his second notice of appeal. See [Fed. R. App. P. 24\(a\)\(3\)\(A\)](#) (stating the district court can deny leave to proceed in forma pauperis to a party previously granted such a status if "the appeal is not taken in good faith or [the Court] finds that the party is not otherwise entitled to proceed in forma pauperis").

II. CERTIFICATE OF APPEALABILITY

In a habeas corpus proceeding under [28 U.S.C. § 2255](#), a petitioner may only appeal if the applicant "has made a substantial showing of the denial of a constitutional right." [28](#)

U.S.C. § 2253(c). A “substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). The Eighth Circuit Court of Appeals remanded this matter for the Court to determine whether issuance of a certificate of appealability is warranted in this case.

Defendant’s motion was an untimely and successive § 2255 motion filed without leave. It did not raise any new issues but rehashed those the Court had repeatedly determined were not meritorious. Reasonable jurists could not debate that denial of the motion was appropriate. For these reasons, the Court determines no certificate of appealability should issue.

IT IS ORDERED:

1. Defendant may not proceed in forma pauperis on appeal.
2. Defendant is not granted a certificate of appealability as to any of the issue raised in his motion to recuse and motion under 28 U.S.C. § 2255.
3. The Clerk of Court shall provide a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.
4. The Clerk of Court shall mail a copy of this Memorandum and Order to Defendant at his last known address.

Dated this 28th day of August, 2025.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge